

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Developing a Unified) CC Docket No. 01-92
Intercarrier Compensation)
Regime)

Comments of the Public Utility Commission of Texas

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Executive Summary

In several proceedings, including a recently concluded renegotiation of SBC Texas's interconnection agreement with the majority of competitive carriers in the state, the Public Utility Commission of Texas (Texas PUC) addressed several areas on which the Federal Communications Commission (Commission) seeks comment, in particular flat-rate versus usage-sensitive pricing, interconnection, and transit. In reaching its decisions, the Texas PUC evaluated voluminous factual evidence from several parties, and weighed this evidence in tandem with existing federal and state laws and policy goals to aid in the development of a competitive local telecommunications market. These decisions may inform the Commission's decision-making process.

As the Commission endeavors to create a unified intercarrier compensation regime, the Texas PUC strongly advises the Commission to look for opportunities to limit regulatory arbitrage. The Texas PUC believes that a key component to reducing arbitrage involves a transition to a methodology that assesses charges based on functions, rather than one based on distance-sensitive usage, or the technology used to deliver a service. The Texas PUC recommends that the Commission strive to create a simple, explicit mechanism, and examine existing subsidies to ensure that they fully meet, but do not exceed, needs, while retaining affordable telephone service in rural areas.

In developing a simple, explicit, and functions-based methodology, the Texas PUC urges the Commission to weigh facts and policy in tandem as it deliberates intercarrier compensation reform and the far-reaching impacts such reform would have nationwide.

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Comments of the Public Utility Commission of Texas

The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these comments in response to the *Further Notice of Proposed Rulemaking (FNPRM)* issued by the Federal Communications Commission (Commission) in the above-captioned proceeding.¹ As discussed in the *FNPRM*, the Commission seeks comment on a unified intercarrier compensation regime, in particular regarding the legal and economic bases of the seven reform proposals submitted by industry groups, and whether and how each reform proposal would affect network interconnection, end-users, and universal service.²

The comments are structured as follows: Part I addresses policy objectives that the Texas PUC believes the Commission should consider as it restructures intercarrier compensation reform; Part II provides detailed information regarding Texas PUC decisions, rules, and Texas laws that address some of the issues being examined by the Commission. In the case of proceedings conducted in Texas that address some of the issues on which the Commission seeks comment, the Texas PUC would note that specific factual information was available to the Texas PUC that facilitated how different policy goals were weighed in reaching a decision. The

¹ *In re Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 (rel. Mar. 3, 2005) (*FNPRM*).

² *FNPRM* at ¶ 4.

Texas PUC urges the Commission to weigh facts and policy together as it deliberates intercarrier compensation reform.

I. Policy Goals

As the Commission crafts a unified intercarrier compensation regime, the Texas PUC strongly advises it to look for opportunities to limit opportunities for regulatory arbitrage. The Texas PUC believes that a key component to reducing arbitrage involves a transition to a methodology that assesses charges based on functions, rather than the legacy regulatory “silos” that historically have divided local, long-distance, and information services. A functions-based methodology that assesses charges regardless of the type of carrier or the technology employed could result in a more level playing field. Further, the Texas PUC believes that the Commission should consider whether jurisdictional distinctions based on end-user locations are becoming increasingly obsolete in an era of growing competition from voice over Internet protocol (VoIP) and wireless providers.

In developing such a methodology, the Texas PUC recommends that the Commission look for opportunities to reduce non-essential complexity, make implicit subsidies explicit, and scrutinize the levels of such subsidies to ensure that they fully meet needs but do not exceed needs. In addition, the Texas PUC urges the Commission to continue to ensure that rural consumers can receive service at reasonable rates, but at the same time, move toward technology neutrality, so that, for example, exorbitantly expensive wireline buildouts to remote areas that may be better served by other technologies are not being subsidized.

II. Relevant Texas PUC Decisions

In several past proceedings, the Texas PUC has addressed some of the areas on which the Commission seeks comment, in particular regarding flat-rate versus usage-sensitive pricing, interconnection and transit. A detailed description of these relevant decisions follows below. In each case, in reaching its decisions, the

Commission evaluated voluminous factual evidence from several parties, and weighed this evidence in tandem with existing federal and state laws and policy goals to aid in the development of a competitive local telecommunications market.

A. Additional Cost Standard

The Commission seeks comments on whether it is necessary to define more precisely what costs are traffic-sensitive, and thus recoverable through reciprocal compensation charges, in the event that the Commission decides to retain the current TELRIC methodology for reciprocal compensation.³ In its first federal arbitration proceedings in 1996-1997, the Texas PUC developed rates for reciprocal compensation using the TELRIC cost standard established for interconnection and unbundled network elements.⁴ These reciprocal compensation rates, still in use in SBC Texas areas today, consist primarily of usage-sensitive rate elements, namely, end-office switching, tandem switching and common transport; a flat-rate charge for the set-up for the end-office switching element was established.⁵

The Commission also requests comment on whether state commissions should retain discretion to establish per-minute reciprocal compensation rates or whether, in light of the regulatory arbitrage opportunities created by per-minute reciprocal compensation rates for carriers serving customers that primarily or exclusively receive traffic, flat-rated recovery of costs should be required, regardless of whether the costs are traffic-sensitive.⁶ The Texas PUC believes that many states, including Texas, have been on the frontline with respect to addressing the

³ *FNPRM* at ¶¶ 66-70.

⁴ *Petition of MFS Communication Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al.*, Award (Nov. 8, 1996) (*First Mega-Arbitration Award*); Docket No. 16189, Arbitration Award (Dec. 19, 1997) (*Second Mega-Arbitration Award*).

⁵ *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982, Award at Attachment A (Aug. 31, 2000) (*Texas Reciprocal Compensation Arbitration Award*).

⁶ *FNPRM* at ¶ 70.

myriad of intercarrier compensation issues that are market-affecting and, in many instances, cases of first impression. The Texas PUC has endeavored to craft reciprocal compensation solutions that promote a competitively neutral, level playing field for all participants while minimizing opportunities for regulatory arbitrage highlighted in the Commission's FNPRM.

As an example of Texas's state-specific decisions, prior to the issuance of the Commission's *ISP Remand Order*, the Texas PUC examined the issue of appropriate compensation for primarily in-bound traffic such as ISP-bound traffic.⁷ After reviewing the detailed factual evidence on the matter, the Texas PUC ruled that ISP-bound calls were local in nature but determined that bifurcated rates (set up and duration) for end office switching using TELRIC principles would best address long-duration calls such as ISP-bound calls.⁸ The end office switching rate applied to all local traffic, including ISP-bound traffic. The Texas PUC reaffirmed the bifurcated rate for end office switching in the recently concluded *Texas T2A Successor Arbitration*, finding that the bifurcated rate continues to be the most accurate measurement for determining costs incurred by each party's end-office call termination functions.⁹

Similarly, the appropriate tandem switching compensation rates for multiple-function switches capable of performing end-office and tandem functions was another contested issue in Texas. After considering extensive evidence on this issue, the Texas PUC developed a "blended tandem rate" for multiple-function switches based on the principle of symmetrical rates.¹⁰ In adopting its "blended tandem rate", the Texas PUC noted that competitive local exchange carriers (CLECs) had "failed to evidence that every call terminated on their networks

⁷ See *Texas Reciprocal Compensation Arbitration Award*.

⁸ *Id.* at 17 and 53.

⁹ Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Arbitration Award – Track I Issues at 26, Intercarrier Compensation DPL Issue No. 64 (Feb. 25, 2005) (*Texas T2A Successor Arbitration*).

¹⁰ *Texas Reciprocal Compensation Arbitration Award* at 37.

involves actual tandem or tandem-like functions, or that every such call needs such function, for that matter.”¹¹ Consequently, the Texas PUC determined that only some calls terminating on the CLEC’s network merited symmetrical compensation.¹² The blended tandem rate applies until a 3:1 (terminating to originating traffic) threshold is reached, after which the end office rate would apply unless the terminating carrier demonstrated actual tandem or tandem-like functionality.¹³

In another recently concluded arbitration, the Texas PUC addressed the issue of intercarrier compensation for foreign exchange (FX or FX-type) traffic.¹⁴ The FX traffic in dispute involved both voice and ISP-bound traffic, and had policy implications for the growing ISP market in underserved markets, such as rural areas. The Texas PUC determined that bill-and-keep was the appropriate compensation mechanism for both voice and ISP-bound FX traffic, and adopted the Percentage of FX (PFX) usage factor methodology to segregate FX from local traffic.¹⁵

The Texas PUC has also developed intercarrier compensation rates for mandatory and optional expanded local calling area traffic.¹⁶ In addition, as

¹¹ *Id.*

¹² *Id.* The Texas PUC determined that only 42% of the traffic terminated by the CLEC’s multiple-function switches is presumed to involve tandem or tandem-like functionality and the geographic areas in which such functionality occurs are generally comparable to the areas served by SBC Texas’s tandem switches, and therefore the tandem rate is justified for 42% of traffic pursuant to 47 C.F.R. § 51.711(a)(3). *Id.* at 36-41.

¹³ *Id.* at 41.

¹⁴ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-type” Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Order On Clarification (Jan. 5, 2005) (*Texas FX Arbitration*).

¹⁵ *Id.* See also *Texas T2A Successor Arbitration* at 26-27, Intercarrier Compensation DPL Issue Nos. 11 and 28.

¹⁶ *Second Mega-Arbitration Award* at Appendix A, Items 1180, 1198, 1200, and Appendix B at 16.

mandated by state law,¹⁷ the Texas PUC has imposed bill and keep as the reciprocal compensation mechanism for local traffic for the first nine months after the date upon which the first commercial call is terminated between SBC Texas and a CLEC.¹⁸ Where the parties have already started exchanging traffic, the nine-month period is adjusted for the time traffic has already been exchanged under another agreement.¹⁹ After the completion of the nine-month period, bill and keep will continue to apply subject to certain traffic thresholds.²⁰ Most recently, in the *Texas T2A Successor Arbitration*, the Texas PUC permitted the option of long term bill and keep between SBC Texas and CLECs subject to an out-of-balance traffic threshold of +/-5% away from equilibrium for three consecutive months.²¹

The Texas PUC believes that it is critical that states continue to have the discretion to develop reciprocal compensation rates that address the unique nature of the traffic and market conditions existing in each state. The Texas PUC believes that states are also in a better position to tailor intercarrier compensation mechanisms to the types of traffic that are mandated by state law,²² such as expanded local area calling arrangements, as is the case in Texas, and to implement statutorily mandated compensation mechanisms, such as bill and keep.

¹⁷ Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. §§ 53.110, 60.125(c) (Vernon 1998 & Supp. 2005).

¹⁸ *First Mega Arbitration Award* at 23; *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Docket No. 16251, Attachment 12: Compensation at 2-3 (*T2A Agreement*).

¹⁹ *T2A Agreement* Attachment 12: Compensation at 2-3.

²⁰ *Id.*

²¹ *Texas T2A Successor Arbitration* at 24-25, Intercarrier Compensation DPL Issue No. 34. The calculation for determining the +/-5% traffic threshold is based on the difference between the total Section 251(b)(5) Traffic and ISP-Bound Traffic originated by each Party's end users terminated to the other Party's end users, divided by the sum of both Parties' end users' terminated Section 251(b)(5) traffic, and ISP-Bound Traffic multiplied by 100.

²² PURA Chapter 55, Subchapter B - Extended Area Service, and Subchapter C - Expanded Toll-Free Local Calling Areas.

B. Rate Averaging and Integration

The Commission seeks comment on the relationship between rate averaging and rate integration with the access charge reform proposals, and, in particular, the potential that, absent further reform of the access charge regime, the existing rate averaging and rate integration requirements could have the effect of discouraging interexchange carriers (IXCs) from serving rural areas.²³

During the 1999 legislative session, as part of SB 560, the Texas Legislature enacted a new section of PURA, PURA § 64.004, regarding Customer Protection Standards. Section 64.004(4) specifically prohibits telecommunications providers “from unreasonable discrimination on the basis of geographic locations.” The Texas PUC subsequently adopted P.U.C. SUBST. R. §26.4 (a) – Statement of Discrimination to codify this requirement. This has the practical effect of preventing telecommunications providers, a term that under state law includes IXCs,²⁴ from rate discrimination among customers based on geographic location.

C. Network Interconnection

The Commission seeks comment on its network interconnection rules, and whether a rule that would require CLECs to pay for transport outside the local calling area to the point of interconnect (POI) would require new entrants to replicate the existing incumbent LEC network, regardless of whether it is efficient to do so.²⁵ The Texas PUC addressed this issue for the first time in the *AT&T-SBC Texas Arbitration Order*, in which it determined that AT&T may designate a single POI in a LATA, but, after a *de minimis* threshold was reached, required AT&T to reimburse SBC Texas for transport costs incurred in hauling the traffic to the AT&T-designated POI in the LATA beyond the first 14 miles, on the originating end

²³ *FNPRM* at ¶¶ 83-86.

²⁴ PURA § 51.002(10)(A)(vi).

²⁵ *FNPRM* at ¶¶ 91-97.

of the call.²⁶ The Texas PUC found this compensation mechanism to be a reasonable balance between a CLEC's right to designate the POI on the ILEC's network and the need to provide the appropriate incentives to the CLEC to make economically efficient decisions about where to interconnect.

The Fifth Circuit Court of Appeals remanded this decision, finding that the transport costs incurred by SBC Texas in carrying intraLATA traffic outside a particular local calling area to AT&T's chosen POI "are governed by the FCC's 'reciprocal compensation' rules pursuant to [47 C.F.R.] § 51.703."²⁷ Consequently, the Court prohibited SBC Texas from charging AT&T for the costs of carrying this traffic to the POI and instead required SBC Texas to bear its own costs for delivering traffic to the POI regardless of distance. On remand, in Docket No. 28021, consistent with the Fifth Circuit's opinion, the Texas PUC declined to adopt SBC Texas's argument that a CLEC-designated POI outside the local calling area would constitute "expensive interconnection," and instead determined that each party must bear the costs of transporting their own originating traffic to POI(s) designated by AT&T within a given LATA.²⁸ Consistent with the Fifth Circuit's decision interpreting Commission rules, the Texas PUC recently reaffirmed this decision in *Texas T2A Successor Arbitration*, and found SBC Texas's rationale and language on Distant POI, interconnection, and 14-mile limit to be barred by the Court's opinion.²⁹

²⁶ *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 22315, Order Approving Revised Arbitration Award (Mar. 14, 2001) (*AT&T-SBC Texas Arbitration Order*). The reciprocal compensation transport rates in Texas were developed based on a 14-mile estimate for interoffice transport. *Texas Reciprocal Compensation Award* at 40 n. 153.

²⁷ *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 348 F.3d 482, 487 (5th Cir. 2003).

²⁸ *Remand of Docket No. 22315 (Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996)*, Docket No. 28021, Arbitration Award (June 24, 2004).

²⁹ *Texas T2A Successor Arbitration* at 17, Network Architecture/Interconnection DPL Issue Nos. 3-5.

The Commission also seeks comment on whether the existing network interconnection rules should be retained or whether alternative methods of determining financial responsibility for network interconnection costs should be considered.³⁰ While the Texas PUC has required each party to bear the transport costs on its side of the POI, as noted above, it has placed reasonable limitations on the location and number of POIs in an effort to promote network efficiency.

Recently, in the *Texas T2A Successor Arbitration*, the Texas PUC rejected SBC Texas's position that interconnecting CLECs be required to establish a POI in every local calling area, because such a requirement would result in CLECs' duplicating SBC Texas's network.³¹ Instead, the Texas PUC determined that a CLEC could choose any technically feasible point of interconnection within SBC-Texas' network, which includes establishing a single point of interconnection in a LATA.³² However, the Texas PUC agreed with SBC Texas that a single POI must be used only as a market-entry mechanism,³³ and, consistent with prior determinations on this issue in Docket Nos. 21791 and 22441,³⁴ the Texas PUC found that once the traffic exceeds 24 DS-1s, CLECs must establish additional POIs. The Texas PUC also found that concerns regarding tandem exhaust, cost, network integrity and the efficiency of serving multiple CLECs together suggest that CLECs should establish direct end office trunking (DEOT) once the parties exchange traffic in excess of 1 DS1.³⁵ Further, SBC Texas offered not to charge

³⁰ *FNPRM* at ¶¶ 91-97.

³¹ *Texas T2A Successor Arbitration* at Network Architecture/Interconnection DPL Issue No. 8.

³² *Id.* at 16-17 in Award, Network Architecture/ Interconnection DPL Issue. Nos. 3, 6, 116, 150.

³³ *Id.*

³⁴ *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc. Pursuant to Section 251 (b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Arbitration Award (May 26, 2000); Docket No. 21791, Order Approving Interconnection Agreement (Sept. 20, 2000); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252 as amended by the Telecommunications Act of 1996, and PURA for rates, terms and conditions with Southwestern Bell Telephone Company*, Docket No. 22441, Arbitration Award (Aug. 11, 2000).

³⁵ *Texas T2A Successor Arbitration* at 17-18, Network Architecture/Interconnection DPL Issue Nos. 7, 82 and 104.

CLECs for these transport facilities from a POI to end offices located in the same local calling area once a certain traffic threshold was reached.³⁶ The Texas PUC also determined that the cost of transport facilities must be equitably shared in proportion to the originating carrier's traffic when two-way trunks are deployed.³⁷ If parties negotiate to have a mid-span fiber meet, the parties shall also negotiate the cost of transport for two-way trunking.³⁸

Taken together, the history of the decisions of the Texas PUC supports a conclusion that state commissions are best able to craft solutions that strike a reasonable balance between a CLEC's right to designate the POI on the ILEC's network and the need to promote network efficiency in a manner that results in a reasonable allocation of transport costs between carriers.

D. Transit

The Commission seeks comments on the appropriate pricing methodology, if any, for transit service.³⁹ The Texas PUC concurs with the Commission that, without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks, especially when carriers do not exchange significant amounts of traffic.⁴⁰ In interconnection rules adopted in 1996, the Texas PUC determined that if a local exchange carrier had sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting local exchange carriers, upon request.⁴¹

³⁶ *Id.*

³⁷ *Texas T2A Successor Arbitration* at 20-21, Network Architecture/Interconnection DPL Issue No. 17.

³⁸ *Id.*

³⁹ *FNPRM* at ¶ 132.

⁴⁰ *FNPRM* at ¶¶ 125-126; *see e.g. Texas Reciprocal Compensation Award* at 18.

⁴¹ PUC SUBST. R. 26.272 (d)(2)(F), relating to Interconnection.

In the *Second Mega-Arbitration* and *T2A Agreement*, which followed the adoption of the interconnection rules, the Texas PUC required SBC Texas to provide transit services, upon request, at TELRIC based rates and adopted rates, terms and conditions for local, optional expanded area service and commercial mobile radio service (CMRS) transit traffic.⁴² While the Texas PUC has determined that transit service is not eligible for reciprocal compensation,⁴³ in its recent *Texas T2A Successor Arbitration* proceeding, it reaffirmed its prior decisions and concluded that there had been no change in law or policy at the federal or state level to warrant a departure from prior Commission decisions on transit service.⁴⁴ The Texas PUC found that, given SBC Texas's ubiquitous network in Texas, and record evidence demonstrating the absence of alternative transit providers in Texas, continuing to impose transit obligations on SBC Texas at TELRIC-based rates was necessary to promote interconnection of all telecommunications network.⁴⁵ Further, in the absence of alternative transit providers in Texas, the Texas PUC found that SBC Texas's proposal to negotiate transit services separately outside the scope of an FTA § 251/252 negotiation may result in cost-prohibitive rates for transit service.⁴⁶ Furthermore, the Texas PUC noted a finding by a federal court a state commission may require an ILEC to provide transiting to CLECs under state law.⁴⁷

The Commission seeks comment on whether transit service obligations under the Act should extend solely to ILECs or to all transit service providers, including CLECs.⁴⁸ While the Texas PUC has not imposed transit obligations on CLECs, it has recognized the need to promote the entry of alternative transit providers in the market. In the recently concluded *Texas T2A Successor Arbitration*, the Texas PUC

⁴² *Second Mega-Arbitration Award*, Appendix B at 16; see *T2A Agreement*, Attachment 12: Compensation for terms and conditions.

⁴³ *Texas Reciprocal Compensation Award* at 18.

⁴⁴ *Texas T2A Successor Arbitration* at 23, Intercarrier Compensation DPL Issue No. 17.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *FNPRM* at ¶ 130.

addressed the issue of CLEC-provisioned transit service and the obligation on SBC Texas as the terminating carrier to accept such traffic.⁴⁹ The Texas PUC found that, in the interest of promoting the entry of alternative transit providers in the market, it is reasonable to permit AT&T to serve as the transit provider.⁵⁰ However, the Texas PUC also noted that direct interconnection, in contrast to indirect interconnection through a third-party transit provider, reduces the potential for billing disputes as well as encourages efficient network interconnection.⁵¹ The Texas PUC required SBC Texas as the terminating carrier to accept transit traffic when AT&T serves as the transit carrier if SBC Texas has not established direct interconnection with the originating carrier.⁵²

In addition, the Commission seeks comment on whether to impose an obligation on the transiting carrier to provide information necessary to bill, including both the identity of the originating carrier, and the nature of the traffic.⁵³ With respect to the issue of exchange of billing information, the Texas PUC believes that transiting carriers should not be required to perform third-party billing and collection functions. The Texas PUC notes that the evidence in the *Texas T2A Successor Arbitration* indicated that SBC as the transit carrier had the ability to identify the carrier it immediately receives traffic from based on the trunk group delivering the traffic (*i.e.*, originating carrier information (OCN)) although this carrier may or may not be the true originating carrier.⁵⁴ The record evidence also indicated that SBC Texas as the transit carrier can also pass on Calling Party Number (CPN) information to the terminating carrier when the originating carrier provides such information to SBC Texas.⁵⁵ Based on this record evidence, the Texas

⁴⁹ *Texas T2A Successor Arbitration* at Inter-carrier Compensation DPL Issue No. 18.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *FNPRM* at ¶ 133.

⁵⁴ *Texas T2A Successor Arbitration* at Inter-carrier Compensation DPL Issue No. 17.

⁵⁵ *Id.*

PUC concluded that SBC Texas as a transit carrier should provide OCN and/or CPN information to the terminating carrier to the extent SBC Texas receives such information from the originating carrier or can provide such information.⁵⁶ However, regardless of whether the traffic or the carrier can be identified through CPN or OCN information, the Texas PUC determined that terminating carriers may not bill SBC Texas as the transit carrier and instead are required to directly bill third parties that originate calls and send traffic over SBC Texas's network.⁵⁷ Further, the Texas PUC concluded that transiting carriers shall bill the originating carrier for its transit service using terminating or originating records based upon existing contract terms between the originating and transiting carrier.⁵⁸

The Texas PUC believes that continued availability of transit services from the ILECs and eventually from all local carriers is critical to the interconnection of networks of all carriers operating in Texas and to the promotion of competition in underserved markets including rural areas. The Texas PUC urges the Commission to permit state commissions to tailor solutions for transit issues that best address the market conditions in each state.

E. Commercial Mobile Radio Service Issues

The Commission seeks comment on whether the intraMTA rule should be eliminated under a unified regime, and if so, how to determine which wireless calls should be subject to reciprocal compensation.⁵⁹ The Texas PUC is currently addressing this issue in a pending arbitration, and is expected to issue a decision in July, 2005.⁶⁰

⁵⁶ *Id.*

⁵⁷ *Id.*; see also *Texas Reciprocal Compensation Arbitration Award* at 64.

⁵⁸ *Texas Reciprocal Compensation Arbitration Award* at 64.

⁵⁹ *FNPRM* at ¶¶ 135-138.

⁶⁰ *F. Cary Fitch d/b/a Fitch Affordable Telecom Petition for Arbitration Against SBC Texas Under 252 of the Communications Act*, Docket No. 29415, Final Decision Point List at 93-99 (Dec. 8, 2004).

The Commission also seeks comment on whether there are retail rating issues unique to CMRS providers that would require preemption of state commission jurisdiction over the retail rating of intrastate calls and the definition of local calling areas.⁶¹ In requesting input on this issue, the Commission specifically cites to ASAP Paging's petition requesting preemption of a Texas PUC order, as well as certain provisions of PURA and the Texas PUC's substantive rules.⁶² As the Texas PUC explained in its comments filed in that proceeding on March 23, 2004, federal preemption is not appropriate in that case.⁶³

III. Conclusion

In closing, the Texas PUC appreciates the opportunity to provide comments to the Commission in this proceeding. The Texas PUC believes that it is important to highlight the current activities taking place at the state level, and to urge the Commission to consider the results of state commission proceedings when considering the recommendations for establishing a unified intercarrier compensation regime. In particular, the Texas PUC urges the Commission to adopt a simple, explicit, functions-based approach that is technology-neutral and minimizes opportunities for regulatory arbitrage.

⁶¹ *FNPRM* at ¶¶ 141-143.

⁶² *FNPRM* at footnotes 401-403.

⁶³ *In re ASAP Paging, Inc. Petition for Preemption of Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers*, Public Utility Commission of Texas' Comments to ASAP Paging, Inc.'s Petition for Preemption, No. DA-92-04, WC Docket No. 04-6 9 (Mar. 23, 2004).

Respectfully submitted,

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May 27, 2005

/s/

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/s/

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